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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,274	03/18/2004	Eiji Kato	FY.51043US1A	5373
20995	7590	08/15/2006	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			PHAN, HAU VAN	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,274

Applicant(s)

KATO ET AL.

Examiner

Hau V. Phan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/7/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,6,9 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,7,8,10-16 and 18-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/7/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of group I, figures 1-5, claims 1-2, 4, 7-8, 10-16, 18-20 and 21-23 in the reply filed on 8/7/2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 3, 5-6, 9 and 17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 8/7/2006.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1-2, 4, 7, 12-16, 18-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsumoto et al. (5,950,748).**

Matsumoto et al. in figures 1-2 and 5, disclose an off-road vehicle comprising a frame, a plurality of wheels arranged to support the frame, an internal combustion engine (11) having a crankshaft configured to rotate. Matsumoto et al. also disclose a transmission (11a) arranged to transmit the rotation of the crankshaft to at least one of

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the wheels (5, 6). Matsumoto et al. also disclose a housing configured to house at least a portion of the transmission. The housing has an air inlet duct (13) through which ambient air enters the housing and an air outlet duct through which the air leaves the housing. The air inlet duct has an inlet opening. The outlet duct has an outlet opening, the inlet and outlet openings positioned higher than the wheels.

Regarding claim 2, Matsumoto et al. disclose a seat (15) that defines a surface onto which a driver or passenger of the vehicle sits. The seat surface positioned higher than the wheels and the outlet opening being positioned at an elevation close to an elevation of the seat surface.

Regarding claim 4, Matsumoto et al. disclose a seat (15) that defines a surface onto which a driver or passenger of the vehicle sits. The seat surface positioned higher than the wheels, and a portion of the outlet duct extending next to the seat.

Regarding claim 7, Matsumoto et al. disclose another portion of the outlet duct extending upwardly along at least a front section of the housing at a location not more than just forward of the seat.

Regarding claim 12, Matsumoto et al. disclose a seat (15) that defines a surface on which a driver or passenger of the vehicle sits. The surface being positioned higher than the wheels, and the inlet opening being positioned at generally the same elevation as the surface or at a location higher than the surface.

Regarding claim 13, Matsumoto et al. disclose a seat unit, the inlet opening is positioned at a location generally behind the seat unit.

Regarding claim 14, Matsumoto et al. disclose a seat unit. The seat unit defines a surface on which a driver or passenger of the vehicle sits. The seat unit also includes a seat back against which the driver or passenger leans. The seat back having a top, the inlet opening of the air inlet duct being positioned at a location higher than the surface and lower than the top of the seat back.

Regarding claim 16, Matsumoto et al. disclose the inlet opening that is faces forward.

Regarding claim 18, Matsumoto et al. disclose the transmission comprising a belt-transmission mechanism, and the housing houses the belt-transmission mechanism.

Regarding claim 19, Matsumoto et al. disclose the belt transmission mechanism including a drive pulley coupled to the crankshaft, an output shaft, a driven pulley coupled to the output shaft, and a belt extending around the drive and driven pulleys.

Regarding claim 20, Matsumoto et al. disclose at least one of the inlet and outlet ducts, which is a member formed separately from the housing and is coupled to the housing.

Regarding claim 21, Matsumoto et al. disclose an off-road vehicle comprising a frame, a plurality of wheels arranged to support the frame, an internal combustion engine having a crankshaft configured to rotate, transmission arranged to transmit the rotation of the crankshaft to at least one of the wheels. Matsumoto et al. also disclose a housing configured to house at least a portion of the transmission, and means for

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introducing, ambient air into the housing and discharging the air from the housing and for inhibiting water from entering the housing.

Regarding claim 22, Matsumoto et al. disclose an off-road vehicle comprising a frame, a plurality of wheels arranged to support the frame, an internal combustion engine having a crankshaft configured to rotate. Matsumoto et al. also disclose a transmission arranged to transmit the rotation of the crankshaft to at least one of the wheels, a housing configured to house at least a portion of the transmission. The housing has an air inlet duct through which ambient air enters the housing and an air outlet duct through which the air leaves the housing. The air inlet duct has an inlet opening. The air outlet duct has an outlet opening, and a seat defining a sitting surface on which a driver or passenger of the vehicle sits. The inlet opening is being positioned at generally the same elevation as or higher than the sitting surface. The outlet opening is being positioned generally close to the elevation of the sitting surface.

Regarding claim 23, Matsumoto et al. disclose the sitting surface that is positioned higher than the wheels.

Allowable Subject Matter

5. Claims 8, 10-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Matsuura et al. disclose a cooling air system for small vehicle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V. Phan whose telephone number is 571-272-6696. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on 571-272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hau V Phan
Primary Examiner
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8/12/06